

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION**

UNIVERSITY OF UTAH RESEARCH  
FOUNDATION *et al.*

Plaintiffs,

vs.

AMBRY GENETICS CORPORATION,  
Defendant.

**ORDER GRANTING PLAINTIFFS'  
MOTION FOR JUDICIAL NOTICE IN  
SUPPORT OF MOTION FOR  
PRELIMINARY INJUNCTIVE RELIEF  
(DKT. 177)**

Judge Robert J. Shelby

CASE NO. 2:13-CV-00640-RJS

Before the court is Plaintiffs' Motion for Judicial Notice in Support of Motion for Preliminary Injunctive Relief. (Dkt. 177.) Plaintiffs move the court to take judicial notice pursuant to Federal Rule of Evidence 201 that the Centers for Medicare and Medicaid Services (CMS) has provided "notice of [a] reimbursement reduction from \$2,700 to \$1,438.14" for BRCA1 and BRCA2 tests, effective January 1, 2014. Plaintiffs seek to have the court consider this fact in evaluating Plaintiffs' Motion for Preliminary Injunction. (Dkt. 5.) Plaintiffs attach as an Exhibit to their Motion a printout from CMS's website explaining that the reduction resulted after pricing data was obtained from "additional laboratories" that began providing testing following "a Supreme Court decision." (Dkt. 177-1.) Plaintiffs attach as an additional Exhibit to their Motion a printout of an online *Wall Street Journal* news article dated December 30, 2013, reporting on CMS's reduction. (Dkt. 177-2.)

Defendant opposes Plaintiffs' Motion. (Dkt. 179.) First, Defendant points out that the CMS reduction might be subject to change following a public comment period. Defendant also objects to Plaintiffs' characterization that the CMS reduction demonstrates Myriad's irreparable harm, as the existence of irreparable harm is a legal conclusion not subject to judicial notice. Defendant also objects to judicial notice of the contents of the online *Wall Street Journal* article.

Finally, Defendant contends that Plaintiffs' Motion dated December 31, 2013, is untimely, where CMS may have made an announcement concerning the reduction as early as November 29, 2013, and again on December 27, 2013.

The court finds Defendants' arguments unpersuasive. Plaintiffs' Motion was timely filed shortly after CMS made its reduction announcement. The court grants Plaintiffs' motion and will take judicial notice of CMS' notice of reimbursement reduction from \$2,700 to \$1,438.14 for BRCA1 and BRCA2 tests. This fact is established by the printout from CMS's own website, and the court need not rely on the online *Wall Street Journal* article. The court takes such notice cognizant of the possibility the reduction might change after the public comment period, and does not take notice of this fact as conclusively establishing irreparable harm.

Plaintiffs' Motion (Dkt. 177) is GRANTED.

Dated this 21<sup>st</sup> day of February, 2014.

  
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Robert J. Shelby  
United States District Judge